

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 100

LICENSURE OF
COMMUNITY RESIDENCES

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37.100.102

Subchapter 1

Adult Foster Homes

37.100.101 ADULT FOSTER HOMES, PURPOSE (1) The purpose of these rules in this subchapter is to establish licensing requirements for adult foster family care homes.

(2) The purpose of an adult foster family care home is to offer in a safe environment light personal care, custodial care and supervision to aged or disabled adults who require assistance in meeting their basic needs.

(3) An adult foster family care home is limited to light personal care, custodial care and supervision and does not provide skilled nursing care.

(4) The licensing requirements for operating an adult foster home do not apply to persons in a mutual or shared living arrangement. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1989 MAR p. 2207, Eff. 12/22/89; TRANS, from DFS, 1998 MAR p. 667.)

37.100.102 ADULT FOSTER HOMES, DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Adult foster family care home" means a private home operated by one or more persons 18 years of age or older which offers light personal care, custodial care and supervision to disabled adults who are not related to the operator by blood or marriage or which offers light personal care or custodial care to aged persons. (An adult foster family care home shall hereafter be referred to as an adult foster home.)

(2) "Aged person" means a person who is at least 60 years old.

(3) "Disabled adult" means a person 18 years of age or older who has been determined to be disabled by the social security administration, the veteran's administration (full disability), the department of public health and human services for the purposes of medicaid eligibility or a court of competent jurisdiction.

(4) "Department" means the department of public health and human services.

(5) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult to provide for the basic needs of food and shelter and having a specific person available to help the adult meet these basic needs.

(6) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of self-medication.

(i) "Assisting" means supervision of the resident in personal hygiene tasks with only occasional "hands on" assistance.

(ii) "Supervision" means guidance of a person as he carries out activities of daily living, including reminding a resident to maintain his medication schedule as directed by his physician, reminding him of important activities to be carried out, assisting him in keeping appointments and being aware of his general whereabouts even though he may travel independently about the community.

(7) "Responsible person" means a relative or friend of the resident or an advocate identified by the department or the placing agency in the placement agreement.

(8) "Mutual or shared living" means that each party shares in the monetary and household responsibilities.

(9) "Skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under orders of an attending physician. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1989 MAR p. 2207, Eff. 12/22/89; TRANS, from DFS, 1998 MAR p. 667.)

Rules 03 and 04 reserved

37.100.105 ELIGIBILITY AND PROCEDURE REQUIREMENTS FOR FOSTER CARE HOMES AND PLACEMENT (1) Individuals considered for placement in adult foster care must meet the department's definition of being an aged or a disabled person.

(2) Persons applying for approval to provide adult foster care may apply at the appropriate regional CFSD office.

(3) Persons applying for approval to provide adult foster care must be studied and evaluated by a department social worker in terms of physical facilities to be utilized and personal qualifications of foster parents to provide such care.

(4) The study and evaluation is reviewed by the social service supervisor who has the final decision as to whether or not a home will be certified for adult foster care.

(5) The applicant is advised in writing as to the decision, and the reasons supporting the decision if denied, in regard to the application to provide adult foster care. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, Eff. 12/31/72; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1990 MAR p. 2278, Eff. 12/28/90; TRANS, from DFS, 1998 MAR p. 667.)

Rules 06 through 09 reserved

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37.100.110 GENERAL The department shall provide the following:

(1) staff to license and reevaluate and renew licenses for adult foster care;

(2) assistance in applying to adult foster home operators for placement of eligible individuals in adult foster homes upon request made to the local CFSD office by any relative, other concerned individuals, medical facility, or doctor, desiring to make such applications;

(3) counseling services to client and foster family around adjustment;

(4) a study of a home's eligibility for licensing as an adult foster care home upon written request addressed to the appropriate regional CFSD office made by any individual or married couple age 18 or over. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, Eff. 12/31/72; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1990 MAR p. 2278, Eff. 12/28/90; TRANS, from DFS, 1998 MAR p. 667.)

Rules 11 through 19 reserved

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37.100.121

37.100.120 ADULT FOSTER HOMES, LICENSE REQUIRED

(1) Every adult foster home shall be licensed by the department.

(2) Any person, group or corporation that establishes or operates an adult foster care home without a license from the department is in violation of law and subject to prosecution. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1989 MAR p. 2207, Eff. 12/22/89; TRANS, from DFS, 1998 MAR p. 667.)

37.100.121 ADULT FOSTER HOMES, LICENSES

(1) The department shall issue a license for a period of 1 to 3 years in duration for an adult foster home to any license applicant meeting all of the requirements established by these rules in this subchapter and the governing statutes.

(2) The department shall determine whether an applicant meets the requirements after conducting a licensing study.

(3) The department shall renew the license on the expiration date of the current license if:

(a) the licensee makes written application for issuance at least 30 days prior to the expiration date of the current license; and

(b) the licensee continues to meet all requirements established by these rules in this subchapter, as determined by the department after a licensing study.

(4) An adult foster home may be licensed to care for four or fewer aged persons or disabled adults in need of such care, and shall not care for more residents than the number allowed by their license. (History: Sec. 50-5-103, 50-5-215 and 53-5-304, MCA; IMP, Sec. 50-5-103, 50-5-204, 50-5-210, 50-5-215 and 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1990 MAR p. 2278, Eff. 12/28/90; AMD, 1996 MAR p. 921, Eff. 4/5/96; TRANS, from DFS, 1998 MAR p. 667.)

Rules 22 through 24 reserved

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37.100.125

37.100.125 ADULT FOSTER HOMES, LICENSING PROCEDURES

(1) An applicant shall apply for an adult foster home license prior to the operation of such home or to the expiration of a current license. Application shall be made to the department upon forms provided by the department.

(2) Upon receipt of application, the department shall conduct a study and evaluation of the home and applicant within 30 days to determine if the home and applicant comply with the licensing requirements. Within 60 days of receipt of application the department shall make a final determination of whether the home will be licensed.

(3) If the department determines that an application or accompanying information is incomplete or erroneous, the department will notify the applicant of the specific deficiencies or errors and the applicant shall submit the required or corrected information within 60 days. The department shall not issue a license until it receives all required information.

(4) Each applicant must report to the department any changes which would affect the current accuracy of information provided on the application within 48 hours of the change.

(5) After denial of an initial application, an applicant who does not meet the standards set forth in these rules can reapply when those standards are complied with. The department will respond within 30 days of the new application. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303 and 53-5-312, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1989 MAR p. 2207, Eff. 12/22/89; TRANS, from DFS, 1998 MAR p. 667.)

Rules 26 through 29 reserved

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37.100.130

37.100.130 ADULT FOSTER HOMES, LICENSE REVOCATION, DENIAL OR SUSPENSION (1) The department may deny, revoke or suspend an adult foster home license by written notification to the licensee specifying the reasons for denial, revocation or suspension within 30 days of the department's determination that:

(a) the home is not in compliance with licensing requirements established by this subchapter; or

(b) the licensee has made misrepresentations to the department, either negligent or intentional; or

(c) the licensee or other persons at the home have been named as a perpetrator in a substantiated report of abuse, neglect or exploitation of an aged person or disabled adult.

(d) the licensee or other persons in the home pose a risk or threat to the safety or welfare of any resident of the home.

(2) The department must deny a license if:

(a) any adult foster care resident of the home requires physical restraint.

(b) any adult foster care resident of the home will need to be carried from the home during any emergency that requires evacuation.

(c) any adult foster care resident of the home is totally incontinent or is incontinent and unable to manage their incontinence with more than minimal supervision.

(3) If any violation of these rules by a licensee places a resident in imminent risk of injury or harm, the license may be immediately revoked.

(4) If the department finds that a current licensee who is operating an adult foster care home is out of compliance with the standards set forth in these rules, the department will not revoke or deny renewal of the license if all the following conditions are met:

(a) the standards out of compliance do not eminently threaten the life or health of the residents;

(b) the standards out of compliance can be corrected within 30 days;

(c) the licensee submits a written correction plan within 15 days of the department's notification of noncompliance specifying how compliance will be made within 30 days; and

(d) the department approves the correction plan.
(History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1989 MAR p. 2207, Eff. 12/22/89; TRANS, from DFS, 1998 MAR p. 667.)

Rules 31 through 34 reserved

37.100.135 ADULT FOSTER HOMES, FAIR HEARING (1) Any person aggrieved by an adverse department action denying, revoking or suspending a license may request a fair hearing in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

(2) The licensee shall cease operation of the foster home pending the fair hearing in those instances where the revocation or suspension of the license is based upon actions that the department has determined places a resident in imminent risk of harm or injury. (History: Sec. 2-4-201, 50-1-202, 52-3-304 and 53-5-304, MCA; IMP, Sec. 50-5-227, 52-3-303 and 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1988 MAR p. 1254, Eff. 6/24/88; TRANS, from DFS, 1998 MAR p. 667; AMD, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 36 through 39 reserved

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37.100.140

37.100.140 ADULT FOSTER HOMES, ENVIRONMENTAL REQUIREMENTS

(1) The home shall be located close to community resources.

(a) The home shall be accessible to transportation -- bus, train, car.

(b) The home shall be in reasonable proximity to shopping areas, churches, senior centers, medical and dental clinics and hospitals.

(2) The home shall have an adequate and safe sewage system and water supply.

(3) The foster home must be equipped with a telephone. Telephone numbers of the hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone.

(4) The licensee shall keep the home clean and in good repair and the premises shall be kept free from objects, materials, and conditions which constitute a danger to the residents.

(5) The foster home shall make adequate provisions for laundering of residents' personal laundry.

(6) The licensee shall be equipped to provide an adequate amount of hot water for a resident's use between the temperature range of 110 through 120° F at the fixture.

(7) Bedrooms. There shall be no more than 3 persons in any bedroom and each room shall include:

(a) floor to ceiling walls;

(b) one door which can be closed to allow privacy for residents;

(c) exclusive of toilet rooms, closets, lockers, wardrobes, alcoves or vestibules, each resident's bedroom shall have 80 square feet per each bed placed in that bedroom.

(d) at least one window which can be opened from the inside without the use of tools;

(e) a mirror appropriate for grooming;

(f) an adequate closet or wardrobe, lighting sufficient for reading and other resident activities, bureau or dresser or equivalent and at least 1 chair with arms in each bedroom for every 2 residents;

(g) an individual bed for each resident at least 36 inches wide and 72 inches long with comfortable springs in good condition, a clean protected mattress not less than 5 inches thick or 4 inches if of a synthetic construction and a pillow;

(h) a licensee shall provide washable bedding for each bed which includes 2 sheets, a pillow case, minimum of 1 blanket and a bedspread;

(i) bed linen shall be changed at least weekly or more often if soiled;

(j) a licensee shall have a linen supply for twice the number of beds in the home.

(8) Living rooms. A foster home shall provide distinct living and sleeping areas. All areas shall be well lighted, heated and ventilated.

(a) The home shall have a living or day room area for use by a resident and his visitors.

(b) The living and sleeping areas for a given resident shall not be in separate wings, units or buildings.

(c) A living room, dining room or other room not ordinarily used for sleeping shall not be used for sleeping by residents or foster family members.

(9) Bathrooms. One toilet, sink, and bath or shower shall be provided for each six adults in the foster home, including the foster family and the residents. At least one toilet and sink shall be available on each floor where residents' bedrooms are located.

(a) All bathrooms used by residents shall have the following:

(i) a toilet and sink;

(ii) a tub or shower equipped with non-skid mats or material and permanent sturdy hand grips;

(iii) an individual towel rack and place for resident's toilet articles; and

(iv) a light switch by the door.

(b) Bathrooms shall be vented to outside or have an outside window.

(10) Kitchen. The kitchen shall be equipped properly to prepare and serve adequate meals.

(a) Waste shall be kept in leakproof, nonabsorbent containers with close fitting covers for garbage, refuse and other solid waste. Waste shall be removed from the kitchen daily and from the premises at least weekly.

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(b) Poisonous compounds, caustics and other dangerous material shall not be kept in the food preparation area.

(c) The kitchen shall be maintained in a clean and sanitary condition.

(d) Food shall not be stored on the floor.

(11) Heating. The home shall be heated by centralized heating or its equivalent. All rooms used by residents shall be kept at a temperature range of 68° through 72° F during non-sleeping hours.

(a) If the heating mechanism is located in the basement of the home, the separation shall include at least a 1 3/4 inch solid wood core door or equivalent to create a floor separation between the basement and the first floor.

(b) Flame producing water heaters or incinerators shall be installed with the same protection as the heating mechanism.

(c) The use of space heaters in a foster home is prohibited.

(d) Factory mutual and underwriter's laboratories approved permanent, fixed type electrical heating, such as recognized panel or baseboard fixed type may be utilized in any location.

(e) In existing homes where an American gas association (AGA) approved sealed combustion wall heater has been installed in accordance with both the AGA and the manufacturer's recommendations, approval will be given if the unit is located on an outside wall, obtains combustion air directly from the outside and vents products of combustion directly to the outside.

(f) All wood burning stoves must be properly installed and inspected by the local fire inspector or a state fire marshal.

(g) Storage of combustible materials is prohibited in rooms containing the heating mechanism, water heater or incinerator.

(h) The heating mechanism shall be inspected by the licensee at least yearly and necessary repairs made.

(12) With respect to any conditions in existence prior to April 5, 1996, any requirement of ARM 37.100.140 may be waived at the discretion of the department if:

(a) physical limitations of the adult foster care home would require disproportionate expense or effort to comply with a requirement, with little or no increase in the level of safety to the residents and staff; or

(b) compliance with a requirement would involve unreasonable hardship or unnecessary inconvenience, with little or no increase in the level of safety to the residents and staff.

(13) With respect to any conditions in existence prior to April 5, 1996, the specific requirements of ARM 37.100.140 may be modified by the department to allow alternative arrangements that will provide the same level of safety to the residents and staff, but in no case shall the modification afford less safety than that which, in the discretion of the department, would be provided by compliance with the corresponding requirement in ARM 37.100.140. (History: Sec. 50-5-103, 50-5-215 and 53-5-304, MCA; IMP, Sec. 50-5-103, 50-5-215 and 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1989 MAR p. 2207, Eff. 12/22/89; AMD, 1996 MAR p. 921, Eff. 4/5/96; TRANS, from DFS, 1998 MAR p. 667.)

37.100.141 ADULT FOSTER HOMES, FIRE SAFETY (1) A smoke detector approved by a recognized testing laboratory, which is properly maintained and regularly tested, shall be located on each level of the foster home. Mobile homes shall have smoke detectors near all sleeping areas.

(2) A workable portable fire extinguisher on each floor of the home with a minimum rating of 2A10BC is required. Extinguishers shall be readily accessible at all times.

(3) No unvented fuel-fired heating devices are allowed in the home.

(4) No stove or combustion heater will be so located as to block escape in case of malfunctioning of the stove or heater.

(5) Exits. Exits are defined as a means of egress or passage to safe ground outside a building.

(a) Every room used for sleeping, living or dining shall have at least two exits, at least one of which shall be a door or stairway providing a means of unobstructed travel to the street or ground level outside of the building.

(b) All exits shall be maintained in unobstructed, easily traveled condition at all times, free of ice and snow on the outside.

(c) Where basements are regularly utilized for resident activities, there shall be two exits.

(d) Doors which form a part of a required exit shall be at least 36 inches in width in new construction, and at least 30 inches in width in existing facilities, and insure adequate width for residents requiring wheelchairs.

(e) Traffic to and from any room shall not be through a resident's bedroom.

(f) The first floor of a foster home shall have at least two separate and independent exits leading to the outside.

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(g) Homes accommodating residents who regularly require wheelchairs, shall be equipped with ramps located at each exit to the outside. A ramp shall not exceed 1 foot of rise in 12 feet of run.

(h) No required path of travel to the outside shall be through rooms that are subject to locking or otherwise controlled by a person other than the person seeking to escape.

(6) No occupied room shall have as its means of access a trap door, ladder, or folding stairs.

(7) Every door that can be locked shall have a means to open the door from the outside in case of emergencies. Locks on closet doors shall be openable from both sides. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

Rules 42 through 44 reserved

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37.100.145

37.100.145 ADULT FOSTER HOMES, OTHER SAFETY REQUIREMENTS

(1) Rugs shall be attached to the floor or made of non-skid material. Unattached throw rugs and scatter rugs are prohibited.

(2) Corridors shall be well lighted, uncluttered and at least 3 feet wide.

(3) Stairways and ramps shall have sturdy banisters. Open stairways should be protected by gates, if aged persons are being cared for. Stairs shall be provided with non-slip tread and shall be at least 3 feet wide.

(4) Every bathroom door shall be designed to permit the opening of the locked door from the outside in an emergency.

(5) Bathtubs and showers shall be equipped with non-skid mat and sturdy grips.

(6) A staff person must have either visual or auditory contact, at least every 30 seconds, with any resident who is able to bathe unassisted but has a condition which may render them physically and/or mentally helpless.

(7) All areas occupied by residents shall be well lighted. Night lights shall be provided for each resident. Light switches shall be located at the door and switches in bathroom shall be located at least 4 feet from tub or shower. Exposed light bulbs shall not be used in the home.

(8) The yard area shall be kept free from all hazards, nuisances, refuse and litter. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1989 MAR p. 2207, Eff. 12/22/89; TRANS, from DFS, 1998 MAR p. 667.)

37.100.146 ADULT FOSTER HOMES, EMERGENCY PREPAREDNESS

(1) The adult foster home shall have procedures for emergency evacuation to be followed in the case of fire or other emergency.

(2) Residents, adult members of the foster family and other persons in the home shall be familiar with emergency procedures and such procedures shall be practiced with the residents at least quarterly.

(3) Emergency procedures shall include a plan for removing all residents, including residents who need assistance in exiting. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

Rules 47 through 49 reserved

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37.100.150

37.100.150 ADULT FOSTER HOMES, PROGRAM (1) The licensee shall provide light personal care, custodial care and supervision for residents, including:

(a) a minimum of three regular, nutritious, attractively prepared meals per day served family style;

(i) Not more than 15 hours shall elapse between the evening and morning meal.

(ii) All perishable foods shall be stored at such temperatures as will protect against spoilage.

(iii) All foods while being stored, prepared or served shall be protected against contamination and be kept safe for human consumption.

(iv) Home canned foods cannot be used for resident's meals.

(v) The licensee shall prepare meals which comply with the special dietary needs of the resident who has been placed on a special diet by his physician.

(b) opportunities for residents to participate in community organizations and activities.

(2) The licensee shall cooperate with the placing agency to implement the resident's case plan.

(3) The licensee shall allow each resident the opportunity to voluntarily practice his or her own religion. Residents shall be permitted by the licensee to attend religious services of the resident's choice in the community and to visit with representatives of their faith.

(4) The licensee shall allow each resident the opportunity to identify with his cultural heritage.

(5) The licensee shall allow for the privacy for the resident. The licensee shall provide appropriate sleeping arrangements, separate storage space for clothing and personal articles, and a place to display pictures, belongings and other personal items.

(6) The resident shall be provided the opportunity for bathing and personal grooming as desired.

(7) If a resident requires assistance in bathing, the person assisting should be of the same sex whenever possible. If not possible, appropriate covering shall be used to assure the resident's privacy.

(8) The resident shall be allowed to dress as fashion, personal tastes, cleanliness and the season warrants.

(9) An adult member of the foster family or another adult employee of the licensee shall always be present when a resident is in the home except as may be provided in a resident's individual assessment plan.

(10) The licensee shall not subject the resident to moral, social and financial exploitation.

(11) Residents shall not be used as employees of the foster home or be coerced into performing tasks such as housekeeping, laundering and yard work for the operator or others.

(12) A resident shall have access to the use of the United States mails, and may write and send mail at his own expense without censorship and receive mail addressed to him unopened.

(13) A resident shall have daily, private access and use of a telephone for local calls. Similar access is to be granted for long distance calls which are made collect or for which charges are otherwise paid by the resident.

(14) Restrictive visiting hours shall not be maintained and residents shall be allowed to receive reasonable numbers of visitors at any reasonable time.

(15) An elderly or disabled adult shall not be denied admission to, or be discharged from, a foster home because of race, religion, color or national origin. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1989 MAR p. 2207, Eff. 12/22/89; TRANS, from DFS, 1998 MAR p. 667.)

37.100.151 ADULT FOSTER HOMES, MEDICATION (1) All residents must take their own medications.

(2) The licensee shall, as necessary, be responsible for providing assistance to the resident in taking his medications, including, but not limited to:

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- (a) reminding the resident to take medications;
 - (b) assisting with the removal of a cap;
 - (c) assisting with the removal of a medication from a container for residents with a disability which prevents performance of this act; or
 - (d) observing the resident take the medication.
- (3) If the licensee must assist the resident in taking medicine in any way, the licensee shall assure that a medication record is kept noting the doses taken and not taken.
- (4) The medication record shall indicate the reason for the omission of any dose of medication.
- (5) Prescription drugs shall be purchased from a licensed pharmacy, labeled with the name, address and telephone number of the pharmacy, name of the resident, name and strength of the drug, direction for use, date filled, prescription number and name of physician and expiration date. Controlled substances shall have a warning label on the bottle.
- (6) There shall be a locked storage space provided for resident's medication.
- (7) All medication shall be left in the container in which it was provided to the resident by the pharmacist or physician.
- (8) If the resident is not able to do so, the licensee shall destroy all discontinued prescriptions. Documentation of disposition including resident's name, name of drug, quantity and prescription number shall be signed by the licensee disposing of the medication. This documentation shall be filed in the resident's record.
- (9) Over-the-counter drugs shall be locked up and made available only to the resident who purchased them. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303 and 53-5-304, MCA; NEW, 1989 MAR p. 2207, Eff. 12/22/89; TRANS, from DFS, 1998 MAR p. 667.)

37.100.152 ADULT FOSTER HOMES, ILLNESSES, ACCIDENTS, ABSENCES OR DEATH (1) In case of an accident or sudden illness, the licensee shall obtain needed care immediately and notify the relative, other person or agency responsible for placing and maintaining the resident in the foster home.

(2) Accidents or incidents resulting in injury to resident which required medical attention shall be reported to the department within 72 hours. An accident record or incident report shall be prepared for any accident involving a resident, foster family member or visitor. Incident includes seizures or highly unusual behavior episodes. An accident record or incident report shall include the following information:

- (a) name of person involved in accident or incident;
- (b) date, hour, place and cause of accident or incident;
- (c) description of the accident or incident;
- (d) effect of accident or incident on person involved and care given;
- (e) name of physician notified and time of notification;
- (f) physician's statement regarding extent of injuries, treatment ordered and disposition of person involved;
- (g) corrective measures taken to avoid repetition of accident or incident.

(3) If a resident is absent from the home without explanation for a period of 4 hours or more, the foster parents shall notify the local law enforcement authorities, the licensing social worker, the relatives or legal guardian and the person or agency responsible for placing and maintaining the resident in the adult foster home.

(4) When a resident dies, the licensee shall immediately notify the resident's physician, the next of kin or legal guardian, the licensing social worker and the person or agency responsible for placing and maintaining the resident in the adult foster home. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

37.100.153 ADULT FOSTER HOMES, RECORDS (1) The licensee shall submit to the department, upon its request, any reports required by federal or state law or regulation.

(2) A licensee shall report a change of address to the department at least 3 weeks prior to moving, and the department shall evaluate whether the new residence meets the licensing requirements before the licensee may operate an adult foster home in the new residence.

(3) As required by the Elder Abuse Prevention Act, 53-5-511(3)(e), MCA, any person who operates or is employed by an adult foster home shall report any abuse, neglect or exploitation of a resident to the department or its local affiliate.

(4) The licensee shall maintain a record regarding each resident in the home which shall contain at least the following information:

- (a) name, address and telephone number of next of kin or legal guardian;

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(b) name, address and telephone number of person or agency responsible for placing the resident in the home and a copy of the placement agreement;

(c) date of admission;

(d) the name and address of the preferred physician and hospital;

(e) any accident reports or other incident reports regarding the resident;

(f) any grievance or complaints lodged by the resident;

(g) an individual record of prescribed medication taken or not taken;

(h) all resident records shall be updated at least quarterly. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1989 MAR p. 2207, Eff. 12/22/89; TRANS, from DFS, 1998 MAR p. 667.)

Rules 54 through 56 reserved

37.100.157 ADULT FOSTER HOMES, THIRD PARTY PROVIDERS

(1) It is recognized that residents may require temporary in-home services from third party providers. The following third party services are allowed in adult foster care homes:

(a) If the home operator who is the only service provider in the home becomes temporarily incapacitated (2 weeks or less), a home attendant, personal care attendant or other qualified person may come into the home to provide the needed services.

(b) If a resident's physician prescribes temporary (less than 30 days) in-home skilled nursing services to prevent the resident's hospital confinement, skilled nursing services may be provided in the adult foster home for a period not to exceed 30 days.

(c) If a current resident requires hospice services, such services may be provided in the adult foster home for an indefinite period.

(2) The third party in-home skilled nursing services or hospice services shall not exceed 2 hours per day per resident.

(3) The day and hour limits established in this section are not limitations on the availability of services from any state or federally funded in-home service programs, but are established to insure that adult foster care homes provide light personal care and custodial services, not skilled nursing services.

(4) Payment from third party services is the responsibility of the resident. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303 and 53-5-304, MCA; NEW, 1989 MAR p. 2207, Eff. 12/22/89; TRANS, from DFS, 1998 MAR p. 667.)

Rules 58 through 60 reserved

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37.100.161 ADULT FOSTER HOMES, RESIDENT'S FUNDS (1) A resident shall have access to and use of his or her personal funds. Exceptions shall be subject to provisions of the resident's assessment plan.

(2) A licensee may handle a resident's finances only if no other responsible person is available and willing to do so.

(a) The maximum value of money and valuables a licensee shall accept for safekeeping shall not exceed \$100.00 per resident.

(b) Resident's funds shall be kept separate and apart from all funds and monies of the licensee and treated as a trust obligation of the licensee.

(3) The foster parent is responsible for maintaining a written record of each resident's personal property and personal financial transactions, except for those residents who are capable of handling their own financial affairs or those residents whose financial affairs are handled by a relative, guardian or conservator.

(4) The licensee shall keep a current monthly record of the income and source of income and expenses for each resident except those residents who are capable of handling their own financial affairs.

(a) The licensee shall insure that the resident's personal money and personal property is not appropriated or misused by any person. Any unethical use of a resident's money or property by another shall be reported to the department or its local affiliate pursuant to 53-5-511, MCA.

(5) Transactions prohibited:

(a) A member or employee of a foster family shall not borrow money, property or other valuables from a resident.

(b) Sales or other financial transactions between a resident and a member or employee of the foster family are prohibited. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

37.100.162 ADULT FOSTER HOMES, PLACEMENT (1) The licensee shall enter into a written placement agreement with the agency or person placing the elderly or disabled adult in the home.

(a) The agreement shall specify the responsibilities of the licensee and the placing agency or person requesting care.

(b) The agreement shall set forth the charges that will be made to the resident for care and an itemized statement of what expenses in addition to the cost for care will be charged to the resident.

(c) A copy of the agreement shall be filed in the resident's file.

(d) For those residents placed in the home by the department, a copy of the agreement shall be sent to the department within 3 days from the day the adult begins to reside in the home.

(e) As part of the written agreement for residents not placed by the department, the licensee will state the policy for refunding the resident's payments.

(2) The prospective resident or his guardian shall be allowed to participate in the selection of a foster home.

(3) If there is a question as to whether the aged or disabled adult can be adequately cared for in foster care, the licensee or placing agency shall contact the adult's personal physician for a recommendation.

(4) The licensee shall not discharge or transfer a resident from the home without prior planning, including but not limited to:

(a) determining that the move is in the resident's best interest;

(b) maintaining a record that includes date of discharge, the reason for discharge, the disposition of money and valuables held for safekeeping and a forwarding address of the resident or a relative, guardian or other adult;

(c) providing 10 days prior notice to the placing agency or person responsible for placing the resident. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1989 MAR p. 2207, Eff. 12/22/89; TRANS, from DFS, 1998 MAR p. 667.)

Rules 63 and 64 reserved

37.100.165 ADULT FOSTER HOMES, FOSTER PARENTS

(1) Foster parents, employees and other members of the household must be in good physical and mental health. To assist the department in

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evaluating the mental and physical health of applicants, foster parents, employees and members of the foster home household, the applicant or licensee shall cooperate with the department in providing the following information:

(a) A CSD-SS-33, "personal statement of health for licensure" form provided by the department must be completed for each person living in the household or employed by the licensee and submitted to the department with the initial application for licensure and annually thereafter.

(b) The applicant for licensure or relicensure shall complete the application form provided by the department, which shall include questions regarding whether the applicant or other member living in the household has received inpatient or outpatient treatment for mental illness, drug or alcohol abuse.

(c) Any applicant, any licensed foster parent or any member of the foster home household or employed by the licensee may be asked to obtain a psychological evaluation or medical examination by the department.

(d) Any applicant, any licensed foster parent or any member of the foster home household or person employed by the licensee may be asked to sign an authorization of release of medical or psychological records allowing the department to obtain medical records concerning the applicant, licensed foster home parent, any other member of the household or person employed by the licensee.

(e) Any applicant, licensed foster parent, member of the foster home household or staff member may be asked to sign an authorization of release of criminal record information if the department believes that the person may pose a risk or threat to the safety or welfare of any resident of the home.

(2) A foster family must include at least one adult who lives in the home on a permanent basis and who is not engaged in employment outside the home. Exceptions may be granted by the department if there is adequate provision for alternative care.

(3) The foster parent, employees and other members of the household shall:

(a) accept agency supervision;

(b) share information about the residents with the department and the agency or persons responsible for placing and maintaining the resident in the home; and

(c) cooperate with any resident's physician in assisting the resident in following the physician's recommendations to the resident. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1989 MAR p. 2207, Eff. 12/22/89; TRANS, from DFS, 1998 MAR p. 667.)

Rules 66 through 69 reserved

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37.100.170 ADULT FOSTER HOMES, COMPLAINTS (1) The licensee shall have a written grievance policy which outlines the procedures to be followed by a resident in presenting a grievance to the family concerning his care in the home.

(2) A resident's grievances and complaint record shall be maintained which shall include copies of all residents' grievances or complaints filed in chronological order. The report shall include the nature of the complaint, the date of the complaint and a statement indicating how the issue was resolved. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

Rules 71 through 74 reserved

37.100.175 ADULT FOSTER HOMES, PROHIBITED PRACTICES (1) A foster home shall not subject any resident to physical restraint, isolation, corporal punishment, personal humiliation or the withholding of meals, water, clothing, mail or visits.

(2) A licensee is prohibited from providing skilled nursing care.

(3) A foster home shall not provide day care services to adults or children, except that a foster home under this rule may provide day care services to children while foster care residents are present in the home for a maximum period of 3 hours per any 24-hour period, if special approval is given by the regional administrator. The regional administrator's decision on granting or denying special approval must be based on the following:

(a) facts demonstrating the ability (or, in cases where special approval is denied, the inability) of the operator to provide for the needs of both the child day care enrollees and the foster care residents during the 3-hour period of time that this rule allows for the presence of both foster care residents and child day care enrollees;

(b) facts bearing on whether there is beneficial social interaction between the foster care residents and the day care enrollees; and

(c) any other relevant facts and/or circumstances bearing on the best interests of the foster care residents and the day care enrollees. (History: Sec. 53-5-304, MCA; IMP, Sec. 53-5-303, MCA; NEW, 1985 MAR p. 289, Eff. 3/29/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1990 MAR p. 2278, Eff. 12/28/90; AMD, 1992 MAR p. 800, Eff. 4/17/92; TRANS, from DFS, 1998 MAR p. 667.)

Subchapter 2 reserved

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Subchapter 3

Community Homes for Persons
with Developmental Disabilities

37.100.301 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES: PURPOSE (1) The purpose of these rules is to establish licensing requirements for community homes for developmentally disabled persons.

(2) The purpose of a community home is to provide a family-oriented, home-like residence and related residential services to persons with developmental disabilities so as to enable those persons to enjoy a manner of living that is as close as possible to that considered to be normal in the community.

(3) Residents will reside in the least restrictive environment. Intervention will be the least intrusive into, and the least disruptive of, the person's life and represent the least departure from normal patterns of living that can be effective in meeting developmental needs. The person's developmental needs will be met through domiciliary services, personal-social assistance and program plans and training. Residents will be encouraged to engage in meaningful activity, to develop techniques to become increasingly more independent, and to interact with the community in which they reside. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

37.100.302 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES: DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Applicant" means a non-profit or state-operated entity which has completed and submitted to the department a license application/renewal request for the operation of a community home for persons with developmental disabilities.

(2) "Community home" means a family-oriented residence or home designed to provide facilities for persons with developmental disabilities, as defined in 53-20-302, MCA.

(3) "Community home staff" means those persons employed by a provider to directly participate in the care, supervision and guidance of the residents in a community home for persons with developmental disabilities.

(4) "Department" means the department of public health and human services.

(5) "Developmentally disabled person" means a person who has a developmental disability as defined in 53-20-202(3), MCA.

(6) "Habilitation" means the process by which the staff assists developmentally disabled persons to acquire and maintain skills, to enable them to cope with their own demands, and to raise the level of their physical, mental and social functioning.

(7) "Individual habilitation plan (IHP)" means a written plan of intervention and action developed as provided for in ARM 46.8.105 by an interdisciplinary team of persons on the basis of a skill assessment and determination of the status and the needs of a developmentally disabled person.

(8) "Provider" means the person, corporation or other entity furnishing community home services to developmentally disabled persons.

(9) "Resident" means a developmentally disabled person who lives in and receives services from a community home.

(10) "Training" means an organized program for assisting developmentally disabled persons in acquiring, improving or maintaining particular skills. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

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37.100.307 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES: LICENSE REQUIRED (1) The department will issue a license for a community home to any license applicant meeting requirements established by these rules. However, the department may waive in whole or in part procedures for verifying compliance with the requirements of these rules upon receiving written documentation that:

(a) another state agency has already licensed or otherwise approved the operation of the community home, or

(b) a national or state recognized certification process has already been completed and has resulted in certification, accreditation, or other approval of the operation of the community home.

(c) Waiver of procedures for checking compliance as provided in this subsection may occur only where procedures proposed to be waived are clearly already provided for in the accreditation or approval process relied on by the licensing representative. Waiver of procedures must not result in the reduction of standards imposed through licensing requirements.

(2) The department will determine based upon a licensing study whether an applicant meets the requirements.

(3) The department will deny a license to any applicant that fails to meet the requirements established by these rules unless circumstances require that a temporary license be issued or the department determines it is appropriate to issue a provisional license.

(4) The department will issue a license annually on the expiration date of the previous year's license if:

(a) the provider makes written application for issuance at least 30 days prior to the expiration date of its current license; and

(b) the provider continues to meet all standards established by these rules, as determined by the department after a licensing study and upon receipt of certification by the state fire marshal and local health authority.

(5) A community home may be licensed for two or more residents not to exceed eight and, with special written permission from the department, may be licensed for nine to twelve residents.

(6) The department may give special permission for a community home license for 9 to 12 residents if the state fire marshal verifies in writing that:

(a) a manually operated fire alarm system is installed;

(b) all sleeping rooms below street floor level have direct access to the outside of the building; and

(c) any corridor or space necessary for safe exit does not pass an exposed vertical opening; or

(d) there are suitable alternatives to (a), (b) or (c) already in place and approved in writing by the state fire marshal.

(7) The department may issue a temporary license not to exceed 60 days to any applicant or provider who has not received a fire marshal or health department certification because of unavoidable delays in the certification process.

(8) The department may in its discretion issue a provisional license for any period, not to exceed 6 months, to any license applicant that has met all applicable requirements for fire safety and has submitted a written plan approved by the department to comply fully with all minimum requirements established by these rules within the time period covered by the provisional license.

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(a) The department may renew a provisional license if the license applicant shows good cause for failure to comply fully with all minimum requirements within the time period covered by the prior provisional license, but the total time period covered by the initial provisional license and renewals may not exceed 1 year. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1992 MAR p. 2277, Eff. 10/16/92; TRANS, from DFS, 1998 MAR p. 667.)

37.100.308 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES: LICENSING PROCEDURES (1) An applicant shall apply for a community home license prior to the operation of such home or to the expiration of a current license. Application shall be made to the department upon forms provided by the department.

(2) The department will upon receipt of the application, conduct a study and evaluation of the applicant.

(3) If the department determines that an application or accompanying information is incomplete or erroneous, the applicant will be notified of the specific deficiencies or errors and shall submit the required or corrected information within 60 days. The department will not issue a license until it receives all required information.

(4) Each applicant shall promptly report to the department changes which would affect the current accuracy of information provided on the application.

(5) The department may waive in whole or in part the requirements of (2) of this rule, and/or any other procedures for checking compliance with the requirements of this subchapter, based on a proper waiver of such procedures under (1) of ARM 37.100.307. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1653, Eff. 7/1/87; AMD, 1992 MAR p. 2277, Eff. 10/16/92; TRANS, from DFS, 1998 MAR p. 667.)

Rules 09 through 11 reserved

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37.100.313

37.100.312 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL
DISABILITIES: LICENSE REVOCATION, DENIAL OR SUSPENSION

(1) The department may deny, revoke or suspend a community home license by written notification to the provider if the department determines that:

(a) the facility is not in compliance with fire safety requirements as evidenced in writing by the state fire marshal; or

(b) the program is not in substantial compliance with health rules or any other licensing requirements established by this subchapter; or

(c) the provider has made misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility.

(2) If any violation places a resident in a life threatening situation the license may be immediately revoked. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

37.100.313 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL
DISABILITIES: PERSONS AFFECTED BY DEPARTMENT RECORDS (REPEALED)
(History: Sec. 2-4-201 and 53-20-305, MCA; IMP, Sec. 2-4-201 and 53-20-305, MCA; NEW, 1994 MAR p. 2939, Eff. 11/11/94; TRANS, from DFS, 1998 MAR p. 667; REP, 2004 MAR p. 2409, Eff. 10/8/04.)

Rules 14 and 15 reserved

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37.100.316 FAIR HEARING (1) Any person, corporation or other entity aggrieved by an adverse department action denying, revoking or suspending a license may request a fair hearing in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

(2) The provider shall cease operation of the community home pending the fair hearing in those instances where the revocation or suspension of the license is based upon actions that the department has determined are imminent life or health endangering situations. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS & AMD, from DFS, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 17 through 19 reserved

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37.100.320 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL
DISABILITIES: FIRE, HEALTH AND SAFETY CERTIFICATION

(1) Community homes are required by the Montana department of justice to comply with the fire safety requirements and procedures found in ARM 23.7.110. A community home must comply with the certification requirements of ARM 23.7.110 to obtain licensure, and during licensure, the community home must remain current on its fire safety certification under ARM 23.7.110.

(2) A community home will only be licensed by the department if there is written certification from the local or state health authority that the home meets the following requirements:

(a) For an adequate and potable water supply, a community home must:

(i) connect to a public water supply system approved by the department of environmental quality; or

(ii) for community homes utilizing a non-public water system, the department hereby adopts and incorporates by reference the following circulars prepared by the department of environmental quality:

(A) circular #11 for springs;

(B) circular #12 for water wells;

(C) circular #17 for cisterns;

(D) the circulars mentioned in (A), (B) and (C) set forth the relevant water quality standards and are available from the Department of Environmental Quality, 1520 East Sixth Avenue, Helena, Montana 59620.

(iii) if a non-public water supply is used, submit a water sample for analysis at least quarterly to a laboratory licensed by the department of environmental quality;

(iv) repair or replace the water system when the supply:
(A) contains microbiological contaminants; or
(B) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water carried waste disposal.

(b) For sewage to be safely disposed of, a community home must:

(i) connect to a public sewage system approved by the department of environmental quality; or

(ii) if a non-public system is utilized, the department hereby adopts and incorporates by reference bulletin 332, which sets forth standards for sewage disposal. A copy of bulletin 332 may be obtained from the Department of Environmental Quality, 1520 East Sixth Avenue, Helena, Montana 59620; and

(iii) repair or replace the sewage system whenever:

(A) it fails to accept sewage at the rate of application;

(B) seepage of effluent from or ponding of effluent on or around the system occurs;

(C) contamination of a potable water supply or state waters is traced to the system; or

(D) a mechanical failure occurs.

(c) For solid waste to be safely stored and disposed of, a provider must:

(i) store all solid waste between collections in containers which have lids and are corrosion-resistant, flytight, watertight, and rodent-proof;

(ii) clean all solid waste containers as needed; and

(iii) utilize a private or municipal hauler to transport the solid waste at least weekly to a landfill site approved by the department of environmental quality.

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(d) For safety and sanitation a provider must comply with the following structural requirements:

(i) All rooms and hallways must be provided with at least 10 footcandles of light, and bathrooms and areas used for reading must be provided with at least 30 footcandles of light.

(ii) Floors and walls of rooms subject to large amounts of moisture must be smooth and non-absorbent.

(iii) Floor and wall mounted furnishings must be easily moved or mounted in such a way as to allow for easy cleaning.

(iv) Adequate toilet and bathing facilities must be provided:

(A) one toilet and one sink for every six residents;

(B) one tub and shower for every eight residents;

(C) drying space for wash cloths and towels; and

(D) bathing facilities and stairs must be provided with anti-slip surfaces.

(v) Food preparation facilities must be equipped with at least the following:

(A) facilities to adequately wash utensils and equipment;

(B) refrigeration equipment capable of maintaining foods at or below 45° F;

(C) cooking facilities;

(D) adequate and clean food preparation and storage areas;

(E) equipment to insure all food is transported, stored, covered, prepared and served in a sanitary manner.

(vi) Separate storage of clean and dirty linen shall be provided.

(vii) Storage space shall be available for the personal belongings of residents and for food, linen, equipment and other household supplies.

(viii) There shall be hot and cold water available in the home. Water temperature for hot water must be limited to 120° F or below.

(e) For adequate housekeeping a provider must insure that:

(i) the building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin;

(ii) the floors, walls, ceilings, furnishings, and equipment are in good repair, free of hazards, clean and free from offensive odors;

(iii) cleaning equipment and supplies are provided in sufficient quantity to meet housekeeping needs of the facility; and

(iv) every provider must have and adhere to a maintenance policy and schedule which describes the regular maintenance of the home and yard. The maintenance policy shall include type of duties, methods and timelines relating to housekeeping, repairs, and general prevention of accidents and health dangers.

(f) Poisonous compounds shall not be stored in food preparation areas or food storage areas or in any areas where residents may initiate unsupervised contact.

(g) Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Outdated and deteriorated drugs and drugs not being used must be removed and disposed of.

(h) Use of home canned products other than jams, jellies and fruits is prohibited unless the home is approved as a commercial food processor.

(3) Local health sanitarians are permitted to charge a reasonable fee for their inspection services to the applicant. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1993 MAR p. 149, Eff. 1/29/93; TRANS, from DFS, 1998 MAR p. 667.)

37.100.321 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES: PHYSICAL SITE REQUIREMENTS (1) The community home shall be located to facilitate the use of community resources. If the home is not within walking distance of community shopping, recreational and other community services; transportation shall be available at no cost or an affordable cost to the resident.

(2) The design, construction and furnishings of the home shall be home-like and encourage a personalized atmosphere for residents.

(3) Each bedroom shall be limited to not more than three persons and shall include:

(a) floor to ceiling walls;

(b) one door which can be closed to allow privacy for residents;

(c) a minimal clear floor space of 7 feet x 9 feet shall be provided for a single bedroom; 13 feet x 9 feet for a double room; and 13 feet x 17 feet for a three-bed room. The space does not include closet space; and

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- (d) at least one window which can be opened.
- (4) Lighting shall be available in all living areas as needed.
- (5) A comfortable temperature shall be maintained.
- (6) The building exterior and yard shall be in good repair and free from hazards such as protruding sharp objects, uncovered wells and cellars and yard maintenance equipment which may be used inappropriately.
- (7) All plumbing fixtures shall be in good repair and properly functioning.
- (8) Inspection of the heating system and hot water tank shall be made regularly.
- (9) For community homes caring for wheelchair and/or other physically handicapped residents, the department hereby adopts and incorporates by reference the American National Standards: specifications for making buildings and facilities accessible to and usable by physically handicapped people. A copy of the specifications is available from the Department of Public Health and Human Services, Child and Family Services Division, Program Management Bureau, P.O. Box 202951, Helena, Montana 59620-2951. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

37.100.322 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES: STAFFING; STAFF RESPONSIBILITIES AND QUALIFICATIONS (1) The provider shall have a sufficient number of appropriately qualified staff to supervise, care for, and train residents.

(2) There shall be a minimum of one staff person present who is directly responsible for resident care and activities when any resident is in the home. This requirement is not applicable if the resident or residents present in the home have been determined by their individual habilitation planning team to be competent in self-care in such situations.

(3) There shall be a minimum of one appropriately trained person who is directly responsible for planning, implementing and reviewing each community home service and residents' program.

(4) The provider shall employ no staff person who has impairments to his/her ability to protect the health and safety of the residents or who would endanger the physical or psychological well being and progress of the residents.

(5) The provider shall provide an orientation for each new employee during the first week of employment. This orientation shall include familiarization with the residents and the rules of the home, behavior deceleration programs, medical concerns of clients and emergency procedures.

(6) The provider shall provide training for each new employee within the first 30 days of employment. This training shall include:

(a) familiarization with the residents and the community home's philosophy, organization, policies, activities, programs, practices and goals;

(b) first aid, emergency procedures and accident prevention techniques;

(c) the implementation of the normalization principle;

(d) knowledgeably and tactfully dealing with residents, relatives or guardians and visitors;

(e) meeting needs of residents through care, supervision, and training skills;

(f) attaining skill areas in which the employee has not reached the level of competence for the job;

(g) description of duties, responsibilities, limitations of authority and principal measures of accountability and performances;

(h) rights of residents which include at a minimum those rights as defined by the client's rights policy of the developmental disabilities program of the department of public health and human services (DD 441); and

(i) aversive and deprivation procedures policy as defined by the developmental disabilities program of the department of public health and human services (DD 442).

(7) The provider annually shall provide or obtain continuing training and education of the information listed in (5) and (6)(a) through (i) above for each direct care staff.

(8) The provider shall provide documentation and attendance records of training and orientation provided for all new and continuing employees. Agendas, general outlines, narratives and other descriptions may be provided to describe the type of content of said training activities. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

Rules 23 and 24 reserved

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37.100.325

37.100.325 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES: RESIDENT SUPPLIES AND EQUIPMENT (1) The provider shall provide the following:

(a) a separate bed of proper size and height for the resident;

(b) clean, comfortable mattress and appropriate bedding which shall be changed as needed and at least once a week;

(c) appropriate furnishings for storage of personal belongings, i.e., a chest of drawers;

(d) access to a mirror;

(e) curtains or window shades which provide privacy;

(f) tables, chairs, sofas, lamps and other furnishings in a common living area for family-like comfort and use;

(g) at least two towels and wash cloths per resident, which are changed as needed and at least twice a week; and

(h) personal supplies and other hygienic necessities whenever the resident does not have the ability to provide these supplies.

(2) The provider shall insure that clothing purchase and care includes:

(a) clothing which is appropriate to the chronological ages considering personal choice; and

(b) clothing which is of good quality, appropriate size, seasonable and in good repair. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

Rules 26 through 29 reserved

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37.100.331

37.100.330 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES: RIGHTS (1) Intervention for the purposes of training shall be the least intrusive into, and the least disruptive of, the person's life and represent the least departure from normal patterns of living that can be effective in meeting developmental needs.

(2) The residents shall not be subjected to treatment of a manner which:

(a) includes abuse or neglect; and/or

(b) limits individual rights without due process.

(3) The utilization in training of aversive procedures or of procedures infringing upon individual rights must meet the approval of the developmental disabilities program of the department of public health and human services and must be presented in writing to the licensing worker. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

37.100.331 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES: HEALTH CARE (1) The provider shall assure each individual of appropriate health care by providing or arranging for:

(a) a primary physician for each resident to provide for health needs;

(b) at least an annual health check-up;

(c) a primary dentist for each resident for at least annual check-ups;

(d) family planning, counseling, mental health and other consultation when appropriate;

(e) medication administration through the procedures listed in 53-20-204(2), MCA, and as prescribed;

(f) modified and therapeutic diets as prescribed;

(g) procedures for the detection of signs of injury, disease, abuse and emergency medical care;

- (h) drinking water throughout each day;
 - (i) a variety of foods which meet the nutritional needs of the residents adjusted for age, sex and activity;
 - (j) developing, reviewing and recording weekly menus of meals served;
 - (k) adequate meals in a family style manner, as appropriate to the individual residents, three times a day;
 - (l) snacks at appropriate times each day;
 - (m) a shower or tub bath daily at the most independent level possible and with due regard for privacy;
 - (n) residents to brush their teeth daily; and
 - (o) written procedures for emergency medical care.
- (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

Rules 32 through 34 reserved

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37.100.335

37.100.335 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES: RESIDENT'S MONEY AND PERSONAL PROPERTY (1) The provider shall insure that the resident's personal money and personal property is not appropriated or misused by any other person or by the provider and its staff.

(2) The provider is responsible for the accurate preparation and maintenance of a written record of each resident's personal property and personal money.

(3) The provider will keep a current monthly record of each resident's income and sources of income. The monthly expenses, including room and board, for the provider will be determined at the time of admission and will be shown monthly as a deduction from the resident's income received. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

Rules 36 through 39 reserved

37.100.340 COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES: RECORD KEEPING (1) The provider shall maintain a written record at the community home for each resident which shall include detailed administrative, training, and educational data. The resident's record shall include at least the following:

- (a) name, sex, birthdate, address, parents/relatives, guardianship, other vital statistics, admission and discharge;
- (b) nature of the resident's difficulties;
- (c) services needed by the resident and his/her family;
- (d) the treatment plan, goals of the plan, and anticipated duration of treatment and training;
- (e) measures taken to implement the plan, i.e. individual training programs;
- (f) evaluation of the services the resident received;
- (g) health records, psychiatric and psychological reports, educational information, assessments, official documentation and financial arrangements including resident's income and expenditures related to services provided to resident;
- (h) resident's activities and incident reports;

(2) Other written records kept at the community home shall include:

- (a) fire safety requirements and compliance; evacuation of residents and staff; fire safety plans and results of monthly fire drills; and
- (b) a list of social service and other service personnel involved with the residents.

(3) The provider administrative file shall be maintained and shall be available upon request of the department. It shall contain at least the following current information and documents:

- (a) governing structure including articles of incorporation and by-laws or other legal basis of existence;
- (b) name and position of persons authorized to sign agreements of official documentation;
- (c) board structure and composition with names, addresses and terms of membership;

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- (d) existing purchase of service agreements;
- (e) insurance coverage;
- (f) procedure for notifying parties of changes in facility's policy and programs;
- (g) a current organizational chart;
- (h) current written job descriptions for all employees, and the names of persons presently employed in those positions;
- (i) records of orientation and training for each employee;
- (j) personnel and programmatic policies and procedures; and
- (k) written grievance procedures which are available to residents and staff.

(4) All entries shall be in ink or indelible pencil, prepared at the time or immediately following the occurrence of the event being recorded, be legible, dated and signed by the person making the entry.

(5) The provider is responsible for the accurate preparation, maintenance and storage of all resident, personal and home records.

(6) The provider shall assure that all resident records are confidential in accordance with all applicable laws and rules and departmental policy.

(7) Records for residents who have been released from the home shall be transferred with the resident or stored by the provider for a period of 5 years following the release.

(8) When the home ceases operation, the provider shall notify the department in writing as to the location and storage of resident records. (History: Sec. 53-20-305, MCA; IMP, Sec. 53-20-305, MCA; NEW, 1983 MAR p. 1839, Eff. 12/16/83; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

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37.100.402

Subchapter 4

Community Homes for Persons
With Physical Disabilities

37.100.401 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: PURPOSE (1) The purpose of these rules is to establish licensing requirements for community homes for physically disabled persons.

(2) The purpose of a community home is to provide a family-oriented, home-like residence and related residential services to persons with physical disabilities so as to enable those persons to enjoy a manner of living that is as close as possible to that considered to be normal in the community.

(3) Residents will reside in the least restrictive environment. Intervention will be the least intrusive into, and the least disruptive of, the person's life and represent the least departure from normal patterns of living that can be effective in meeting the resident's needs. The resident's needs will be met through domiciliary services, personal-social assistance and program plans and training. Residents will be encouraged to engage in meaningful activity, to develop techniques to become increasingly more independent, and to interact with the community in which they reside. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-101 and 53-19-103, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

37.100.402 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Community home for persons with physical disabilities" means a family-oriented residence designed to provide residential services for two to eight physically disabled persons that does not provide skilled or intermediate nursing care. This definition does not preclude the provision of skilled or intermediate nursing care by third-person providers.

(2) "Department" means the department of public health and human services established in 2-15-2201, MCA.

(3) "Physically disabled" means a disabled person with a permanent impairment that substantially limits major life activity, such as walking, self-care, seeing, hearing, speaking, learning, reasoning, judgement, or memory, and that can be diagnosed by a physician.

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(4) "Provider" means the person, corporation or other entity furnishing community home services to physically disabled persons.

(5) "Resident" means a physically disabled person who lives in and receives services from a community home.

(6) "Training" means an organized program for assisting physically disabled persons in acquiring, improving or maintaining particular skills.

(7) "License" means a written document issued by the department that the holder has complied with the applicable rules for a community home for the physically disabled.

(8) "Provisional license" means a written document issued by the department on a time limited basis at the department's discretion or at the initial start-up of a community home if the home is either not in compliance with all licensing requirements but will be in compliance within 6 months. A provisional license includes a temporary or a probationary license. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-102, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

Rules 03 through 06 reserved

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37.100.407

37.100.407 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: LICENSE REQUIRED (1) The department will issue a license for a community home to any license applicant meeting requirements established by these rules. However, the department may waive in whole or in part procedures for verifying compliance with the requirements of these rules upon receiving written documentation that:

(a) another state agency has already licensed or otherwise approved the operation of the community home, or

(b) a national or state recognized certification process has already been completed and has resulted in certification, accreditation, or other approval of the operation of the community home.

(c) Waiver of procedures for checking compliance as provided in this subsection may occur only where procedures proposed to be waived are clearly already provided for in the accreditation or approval process relied on by the licensing representative. Waiver of procedures must not result in the reduction of standards imposed through licensing requirements.

(2) The department will determine based upon a licensing study whether an applicant meets the requirements.

(3) The department will deny a license to any applicant that fails to meet the requirements established by these rules unless the department determines it is appropriate to issue a provisional license.

(4) The department will issue a license annually on the expiration date of the previous year's license if:

(a) the provider makes written application for issuance at least 30 days prior to the expiration date of its current license; and

(b) the provider continues to meet all requirements established by these rules, as determined by the department after a licensing study and upon receipt of certification by the state fire marshal and local health authority.

(5) A community home may be licensed for two through eight residents.

(6) The department may in its discretion issue a provisional license for any period, not to exceed 6 months, to any license applicant that has met all applicable requirements for fire safety and has submitted a written plan approved by the department to comply fully with all minimum requirements established by these rules within the time period covered by the provisional license.

(a) The department may renew a provisional license if the license applicant shows good cause for failure to comply fully with all minimum requirements within the time period covered by the prior provisional license, but the total time period covered by the initial provisional license and renewals may not exceed 1 year. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-101, 53-19-102 and 53-19-111, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1992 MAR p. 2277, Eff. 10/16/92; TRANS, from DFS, 1998 MAR p. 667.)

37.100.408 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: LICENSING PROCEDURES (1) An applicant shall apply for a community home license prior to the operation of such home or to the expiration of a current license. Application shall be made to the department upon forms provided by the department.

(2) The department will upon receipt of the application, conduct a study and evaluation of both the applicant and the facility within 60 days.

(3) If the department determines that an application or accompanying information is incomplete or erroneous, the applicant will be notified of the specific deficiencies or

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37.100.408

errors and shall submit the required or corrected information within 60 days. The department will not issue a license until it receives all required information.

(4) Each applicant shall promptly report to the department changes which would affect the current accuracy of information provided on the application.

(5) The department may waive in whole or in part the requirements of (2) of this rule, and/or any other procedures for checking compliance with the requirements of this subchapter, based on a proper waiver of such procedures under (1) of ARM 37.100.407. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-111, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1992 MAR p. 2277, Eff. 10/16/92; TRANS, from DFS, 1998 MAR p. 667.)

Rules 09 through 11 reserved

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37.100.413

37.100.412 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL
DISABILITIES: LICENSE REVOCATION, DENIAL OR SUSPENSION

(1) The department may deny, revoke or suspend a community home license by written notification to the provider if the department determines that:

(a) the facility is not in compliance with fire safety requirements as evidenced in writing by the state fire marshal; or

(b) the program is not in substantial compliance with health rules or any other licensing requirements established by this subchapter; or

(c) the provider has made misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility.

(2) If any violation places a resident in a life threatening situation the license may be immediately revoked. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-111, 53-19-112 and 53-19-113, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

37.100.413 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL
DISABILITIES: PERSONS AFFECTED BY DEPARTMENT RECORDS (REPEALED)
(History: Sec. 2-4-201 and 52-4-205, MCA; IMP, Sec. 2-4-201 and 52-4-203, MCA; NEW, 1994 MAR p. 2939, Eff. 11/11/94; TRANS, from DFS, 1998 MAR p. 667; REP, 2004 MAR p. 2409, Eff. 10/8/04.)

Rules 14 and 15 reserved

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37.100.416

37.100.416 PHYSICALLY DISABLED GROUP HOMES, FAIR HEARING

(1) Any person, corporation or other entity aggrieved by an adverse department action denying, revoking or suspending a license may request a fair hearing in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

(2) The provider shall cease operation of the community home pending the fair hearing in those instances where the revocation or suspension of the license is based upon actions that the department has determined are imminent life or health endangering situations. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-112, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS & AMD, from DFS, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 17 through 19 reserved

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37.100.421

37.100.420 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: FIRE SAFETY CERTIFICATION (1) Community homes are required by the Montana department of justice to comply with the fire safety requirements and procedures found in ARM 23.7.110. A community home must comply with the certification requirements of ARM 23.7.110 to obtain licensure, and during licensure, the community home must remain current on its fire safety certification under ARM 23.7.110. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-112 and 53-19-113, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1993 MAR p. 149, Eff. 1/29/93; TRANS, from DFS, 1998 MAR p. 667.)

37.100.421 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: HEALTH AND SAFETY CERTIFICATION (1) A community home will only be licensed by the department if there is written certification from the local or state health authority that the home meets the following requirements:

(a) For an adequate and potable water supply, a community home must:

(i) connect to a public water supply system approved by the state department of environmental quality; or

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(ii) meet the standards set forth in the appropriate circular listed below if the community home utilizes a non-public water system. The department hereby adopts and incorporates by reference the following circulars prepared by the department of environmental quality which set forth the relevant water quality standards. These circulars are available from the Department of Environmental Quality, 1520 East Sixth Avenue, Helena, Montana 59620.

(A) circular #11 for springs;

(B) circular #12 for water wells;

(C) circular #17 for cisterns;

(D) community homes using a non-public water supply must submit a water sample for analysis at least quarterly to a laboratory licensed by the department of public health and human services;

(iii) repair or replace the water system when the supply:

(A) contains microbiological contaminants; or

(B) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water carried waste disposal.

(b) For sewage to be safely disposed of, a community home must:

(i) connect to public sewage system approved by the department of environmental quality; or

(ii) meet the standards set by department of environmental quality bulletin 332 if a non-public system is utilized. The department hereby adopts and incorporates by reference bulletin 332, prepared by the Montana department of environmental quality, which sets forth standards for sewage disposal. A copy of bulletin 332 may be obtained from the Department of Environmental Quality, 1520 East Sixth Avenue, Helena, Montana 59620; and

(iii) repair or replace the sewage system whenever:

(A) it fails to accept sewage at the rate of application;

(B) seepage of effluent from or ponding of effluent on or around the system occurs;

(C) contamination of a potable water supply or state waters is traced to the system; or

(D) a mechanical failure occurs.

(c) For solid waste to be safely stored and disposed of, a provider must:

(i) store all solid waste between collections in containers which have lids and are corrosion-resistant, flytight, watertight, and rodent-proof;

(ii) clean all solid waste containers as needed; and

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37.100.421

(iii) utilize a private or municipal hauler to transport the solid waste at least weekly to a landfill site approved by the department of environmental quality.

(d) For safety and sanitation a provider must comply with the following structural requirements:

(i) All rooms and hallways must be provided with at least 10 footcandles of light, and bathrooms and areas used for reading must be provided with at least 30 footcandles of light.

(ii) Floors and walls of rooms subject to large amounts of moisture must be smooth and non-absorbent.

(iii) Floor and wall mounted furnishings must be easily moved or mounted in such a way as to allow for easy cleaning.

(iv) Adequate toilet and bathing facilities must be provided:

(A) one toilet and one sink for every four residents;

(B) one tub or shower for every four residents;

(C) drying space for wash cloths and towels; and

(D) bathing facilities and stairs must be provided with anti-slip surfaces.

(v) Food preparation facilities must be equipped with at least the following:

(A) facilities to adequately wash utensils and equipment;

(B) refrigeration equipment capable of maintaining foods at or below 45° F;

(C) cooking facilities;

(D) adequate and clean food preparation and storage areas;

(E) equipment to insure all food is transported, stored, covered, prepared and served in a sanitary manner.

(vi) Separate storage of clean and dirty linen shall be provided.

(vii) Storage space shall be available for the personal belongings of residents and for food, linen, equipment and other household supplies.

(viii) There shall be hot and cold water available in the home. Water temperatures for hot water must be limited to 120° F or below.

(e) For adequate housekeeping a provider must insure that:

(i) the building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin;

(ii) the floors, walls, ceilings, furnishings, and equipment are in good repair, free of hazards, clean and free from offensive odors;

(iii) cleaning equipment and supplies are provided in sufficient quantity to meet housekeeping needs of the facility; and

(iv) a maintenance policy and schedule is adhered to which describes the regular maintenance of the home and yard. The maintenance policy shall include type of duties, methods and timelines relating to housekeeping, repairs, and general prevention of accidents and health dangers.

(f) Poisonous compounds shall not be stored in food preparation areas or food storage areas or in any areas where residents may initiate unsupervised contact.

(g) Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Outdated and deteriorated drugs and drugs not being used must be removed and disposed.

(h) Use of home canned products other than jams, jellies and fruits is prohibited unless the home is approved as a commercial food processor.

(2) Local health sanitarians are permitted to charge a reasonable fee for their inspection services to the applicant. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-112 and 53-19-113, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

37.100.422 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: STAFFING; STAFF RESPONSIBILITIES AND QUALIFICATIONS (1) The provider shall have a sufficient number of appropriately qualified staff to supervise, care for, and train residents.

(a) During the hours of 7 a.m. to 10 p.m. there shall be a minimum of one staff member per every four residents.

(b) During the hours of 10 p.m. to 7 a.m. there shall be a minimum of one staff member for every eight residents.

(c) All staff persons caring for residents shall be a minimum of 18 years of age.

(d) There shall be a minimum of one staff person present who is directly responsible for resident care and activities when any resident is alone in the home. This requirement is not applicable if the resident or residents present in the home have been determined by the interdisciplinary team to be competent in self-care in such situations.

(2) There shall be a minimum of one appropriately trained person who is directly responsible for planning, implementing and reviewing each community home service and resident's program.

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(3) The provider shall employ no staff person who has impairments to his/her ability to protect the health and safety of the residents or who would endanger the physical or psychological well being and progress of the residents.

(a) Any applicant, provider or staff person may be required by the department to obtain and release a psychological evaluation or medical examination.

(b) Any applicant, provider or staff person may be required to sign an authorization for the release to the department of the required psychological or medical records.

(4) The provider shall provide an orientation for each new employee during the first week of employment. This orientation shall include familiarization with the residents and the rules of the home, clients' specific programs, medical concerns of clients and emergency procedures.

(5) The provider shall provide training for each new employee within the first 30 days of employment. This training shall include:

(a) familiarization with the residents and the community home's philosophy, organization, policies, activities, programs, practices and goals;

(b) first aid, emergency procedures and accident prevention techniques;

(c) knowledgeably and tactfully dealing with residents, relatives, guardians and visitors;

(d) meeting needs of residents through care, supervision, and training skills;

(e) attaining skill areas in which the employee has not reached the level of competence for the job;

(f) description of duties, responsibilities, limitations of authority and principal measures of accountability and performances.

(6) The provider annually shall provide or obtain continuing training and education of the information listed in (5)(a) through (f) above for each direct care staff.

(7) The provider shall provide documentation of training and orientation provided for all new and continuing employees. Agendas, general outlines, narratives and other descriptions may be provided to describe the type of content of said training activities. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-112, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

37.100.423 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: PHYSICAL SITE REQUIREMENTS (1) The community home shall be located to facilitate the use of community resources. If the home is not within walking distance of shopping, recreational and other community services, transportation shall be available either at no cost or at an affordable cost to the resident.

(2) The design, construction and furnishings of the home shall be home-like and encourage a personalized atmosphere for residents.

(3) Each bedroom shall be limited to not more than three persons and shall include:

(a) floor to ceiling walls;

(b) one door which can be closed to allow privacy for residents;

(c) a minimal clear floor space of 7 feet x 9 feet for a single bedroom; 13 feet x 9 feet for a double room; and 13 feet x 17 feet for a three-bed room. The above space requirements do not include closet space; and

(d) at least one window which can be opened.

(4) Lighting shall be available in all living areas as needed.

(5) A comfortable temperature shall be maintained.

(6) The building exterior and yard shall be in good repair and free from hazards such as protruding sharp objects, uncovered wells and cellars and yard maintenance equipment which may be used inappropriately.

(7) All plumbing fixtures shall be in good repair and properly functioning.

(8) The heating system and hot water tank shall be kept in good working order.

(9) All client accessible areas should be located on the ground level or shall be accessible at ground level by floors, ramps and doorways with a clear unobstructed width of not less than 32 inches.

(10) Community homes shall meet the American National Standards for access by handicapped persons. The department hereby adopts and incorporates by reference the American National Standards: specifications for making buildings and facilities accessible to and usable by physically handicapped people. These standards set forth building specifications for access by physically disabled persons. A copy of the standards

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is available from the Department of Public Health and Human Services, Child and Family Services Division, P.O. Box 8005, Helena, Montana 59604. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-112, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

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37.100.427 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: RESIDENT SUPPLIES AND EQUIPMENT (1) The provider shall provide the following:

(a) a separate bed of proper size and height for the resident;

(b) clean, comfortable mattress and appropriate bedding which shall be changed as needed and at least once a week;

(c) appropriate furnishings for storage of personal belongings, i.e., a chest of drawers;

(d) access to a mirror;

(e) curtains or window shades which provide privacy;

(f) tables, chairs, sofas, lamps and other furnishings in a common living area for family-like comfort and use;

(g) at least two towels and wash cloths per resident, which are changed as needed and at least twice a week; and

(h) personal supplies and other hygienic necessities whenever the resident does not have the ability to provide these supplies.

(2) The provider shall insure that clothing purchase and care includes:

(a) clothing which is appropriate to the chronological ages considering personal choice; and

(b) clothing which is of good quality, appropriate size, seasonable and in good repair. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-112, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

Rules 28 and 29 reserved

37.100.430 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: RIGHTS (1) Intervention for the purposes of assisting and training residents shall be the least intrusive into, and the least disruptive of, the person's life and represent the least departure from normal patterns of living that can be effective in meeting residential needs.

(2) The residents shall not be subjected to treatment of a manner which:

- (a) includes abuse or neglect; or
- (b) limits individual rights without due process.

(3) The provider shall adopt a client's rights policy that is agreed to by the department.

(4) The utilization in training of aversive procedures or of procedures infringing upon individual rights must be presented in writing to the licensing worker and meet with the approval of the community staffing team and the department prior to implementation for each client. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-112, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

37.100.431 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: HEALTH CARE (1) The provider shall assure each individual of appropriate health care by providing or arranging for:

(a) a primary physician for each resident to provide for health needs;

(b) at least an annual health check-up;

(c) a primary dentist for each resident for at least annual check-ups;

(d) family planning, counseling, mental health and other consultation when appropriate;

(e) medication administration as authorized by 53-19-112(3), MCA, and as prescribed;

(f) modified and therapeutic diets as prescribed;

(g) procedures for the detection of signs of injury, disease, abuse;

(h) drinking water throughout each day;

(i) a variety of foods which meet the nutritional needs of the residents adjusted for age, sex and activity;

(j) developing, reviewing and recording weekly menus of meals served;

(k) adequate meals in a family style manner, as appropriate to the individual residents, three times a day;

(l) snacks at appropriate times each day;

(m) a shower or tub bath daily at the most independent level possible and with due regard for privacy;

(n) residents to brush their teeth daily; and

(o) written procedures for emergency medical care. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-112, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

Rules 32 through 34 reserved

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37.100.435

37.100.435 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: RESIDENT'S MONEY AND PERSONAL PROPERTY (1) The provider shall insure that the resident's personal money and personal property is not appropriated or misused by any other person or by the provider and its staff.

(2) The provider is responsible for the accurate preparation and maintenance of a written record of each resident's personal property and personal money.

(3) The provider will keep a current monthly record of each resident's income and sources of income. The monthly expenses, including room and board, for the provider will be determined at the time of admission and will be shown monthly as a deduction from the resident's income received. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-112, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

Rules 36 through 39 reserved

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37.100.440

37.100.440 COMMUNITY HOMES FOR PERSONS WITH PHYSICAL DISABILITIES: RECORD KEEPING (1) The provider shall maintain a written record at the community home for each resident which shall include detailed administrative, training, and educational data. The resident's record shall include at least the following:

- (a) name, sex, birthdate, address, parents/relatives, guardianship, other vital statistics, admission and discharge;
- (b) nature of the resident's difficulties;
- (c) services needed by the resident and his/her family;
- (d) the treatment plan, goals of the plan, and anticipated duration of treatment and training;
- (e) measures taken to implement the plan, i.e., individual training programs;
- (f) evaluation of the services the resident received;
- (g) health records, psychiatric and psychological reports, educational information, assessments, official documentation and financial arrangements including resident's income and expenditures related to services provided to resident;
- (h) resident's activities and incident reports.

(2) Other written records kept at the community home shall include:

- (a) fire safety requirements and compliance, evacuation of residents and staff, fire safety plans and results of monthly fire drills; and

(b) a list of social service and other service personnel involved with the residents.

(3) The provider administrative file shall be maintained and shall be available upon request of the department. It shall contain at least the following current information and documents:

(a) governing structure including articles of incorporation and by-laws or other legal basis of existence;

(b) name and position of persons authorized to sign agreements of official documentation;

(c) board structure and composition with names, addresses and terms of membership;

(d) existing purchase of service agreements;

(e) insurance coverage;

(f) procedure for notifying parties of changes in facility's policy and programs;

(g) a current organizational chart;

(h) current written job descriptions for all employees, and the names of persons presently employed in those positions;

(i) records of orientation and training for each employee;

(j) personnel and programmatic policies and procedures; and

(k) written grievance procedures which are available to residents and staff.

(4) All entries shall be in ink or indelible pencil, prepared at the time or immediately following the occurrence of the event being recorded, be legible, dated and signed by the person making the entry.

(5) The provider is responsible for the accurate preparation, maintenance and storage of all resident, personal and home records.

(6) The provider shall assure that all resident records are confidential in accordance with all applicable laws and rules and departmental policy.

(7) Records for residents who have been released from the home shall be transferred with the resident or stored by the provider for a period of 5 years following the release.

(8) When the home ceases operation, the provider shall notify the department in writing as to the location and storage of resident records. (History: Sec. 53-19-112, MCA; IMP, Sec. 53-19-112, MCA; NEW, 1985 MAR p. 1774, Eff. 11/15/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS, from DFS, 1998 MAR p. 667.)

Chapters 101 through 103 reserved